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6 RKO GENERAL, INC., a corporation

FILED

NO. 12 1975

CLERK OF DISTRICT COURT
U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
JAN 14 1975
JAN 14 1975

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8 IN THE DISTRICT COURT OF THE UNITED STATES
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 UNIVERSAL CITY STUDIOS, INC.,
12 a corporation,

13 Plaintiff,

14 vs.

15 RKO GENERAL, INC., a corporation,
16 DINO DeLAURENTIIS CORPORATION, a
17 corporation, and RICHARD COOPER,

Defendants.

NO. CV 75-3526 R

COUNTERCLAIM OF DEFENDANT
RKO GENERAL, INC.

18 RKO GENERAL, INC., a corporation,

19 Defendant and Counter-
20 Claimant,

21 vs.

22 UNIVERSAL CITY STUDIOS, INC.,
23 a corporation,

24 Defendant and Counter-
25 Defendant.

26 Defendant RKO GENERAL, INC., counter-claims against
27 plaintiff, UNIVERSAL STUDIOS, INC. as follows:

28 FIRST COUNT

29 1. This action arises under the copyright law of the
30 United States, Title 17, United States Code §§ 1 et seq., both as
31 a claim for infringement and as a substantial and related claim
32 for unfair competition. Jurisdiction is conferred by Title 28
United States Code §1338(a) and (b).

A002053

1 2. Defendant and Counterclaimant RKO GENERAL INC.
2 ("RKO") and plaintiff UNIVERSAL CITY STUDIOS ("UNIVERSAL") are
3 both corporations organized and existing under and by virtue of
4 the laws of the State of Delaware and qualified to do, and doing,
5 business in the State of California.

6 3. RKO is copyright proprietor of the motion picture
7 photoplay entitled KING KONG, being the successor in interest of
8 RKO Radio Pictures, Inc., which created and produced the same and
9 registered it for copyright following publication February 24,
10 1933 under Registration No. L. 3794 and thereafter on December 5,
11 1960, applied for Renewal Copyright under No. R 267274. Attached
12 hereto marked Exhibits "1" and "2", respectively, are Certified
13 Copies of the Certificate of Copyright Registration and Certifi-
14 cate of Registration of a claim to Renewal Copyright of KING
15 KONG.

16 4. UNIVERSAL has publicly announced, stated and
17 represented, in the press, in these proceedings, and elsewhere,
18 that it plans and intends to produce, sell, distribute, and
19 exhibit throughout the world, a motion picture photoplay slavishly
20 copying RKO's said copyrighted motion picture photoplay KING
21 KONG, featuring the character KING KONG, and utilizing the name
22 KING KONG as the title or part of the title thereof. RKO has
23 duly objected to said plans of UNIVERSAL, but to the best of
24 RKO's information and belief, UNIVERSAL is going forward with
25 said production.

26 5. If UNIVERSAL produces a motion picture photoplay
27 which infringes RKO's said copyright in KING KONG and thereafter
28 proceeds to distribute or exhibit the same, it will be liable to
29 RKO for damages, injunctive relief, and other sanctions under
30 Title 17 U.S. Code §§1 et seq.

31 SECOND COUNT

32 6. RKO refers to Paragraphs 1 through 5 of its First

1 Count herein and incorporates the same as though fully set forth.

2 7. RKO has entered into a written agreement with
3 defendant DINO DeLAURENTIIS CORPORATION ("DeLAURENTISS") exclu-
4 sively licensing it to produce and distribute a new version, or
5 remake, of KING KONG in consideration of a percentage of the
6 gross receipts from the exhibition thereof.

7 8. By issuing said announcements, statements, and
8 representations, UNIVERSAL: has slandered and called into
9 question RKO's rights in its said copyrighted motion picture
10 photoplay and the component parts and title thereof; has diluted
11 the RKO's rights and the value thereof in said copyrighted motion
12 picture photoplay, the title thereof, and the character KING
13 KONG; and has interfered with RKO's prospective economic advan-
14 tage under said written agreement with DeLAURENTIIS, all to RKO's
15 damage in a sum as yet unascertained but believed to be in excess
16 of \$5,000,000.00.

17 9. If UNIVERSAL is not enjoined from continuing to
18 make such announcements, statements, and misrepresentations,
19 RKO's said rights will be further demeaned and diluted and its
20 prospective economic advantage further diminished, all to its
21 irreparable injury.

22 10. There is no adequate or available remedy, other
23 than injunction, to prevent said continuing irreparable injuries.

24 WHEREFORE, Defendant RKO GENERAL prays for judgment
25 against plaintiff UNIVERSAL CITY STUDIOS, INC., as follows:

26 1. That UNIVERSAL be enjoined, both preliminarily
27 and permanently, from producing and distributing for exhibi-
28 tion any motion picture photoplay which infringes RKO's said
29 copyright.

30 2. That UNIVERSAL be enjoined, both preliminarily and
31 permanently, from making any announcements, representations,
32 promotional or other statements representing that it is

1 entitled to make, is making, and/or will produce or distribu-
2 bute any motion picture photoplay utilizing or containing
3 the story of KING KONG and/or the character or title KONG or
4 KING KONG.

5 3. For damages in a sum in excess of \$5,000,000.00.

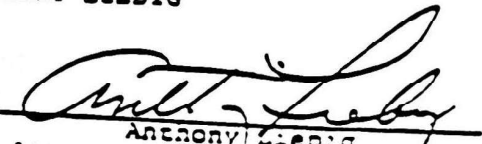
6 4. For costs of suit herein including reasonable
7 attorneys' fees.

8 5. For such other relief as the court may deem
9 proper.

10 DATED: November 19, 1975.

11 LILLYCK McHOSE & CHARLES
12 ANTHONY LIEBIG

13
14 By:


15 Anthony Liebig
16 Attorneys for Defendant and
17 Counterclaimant RKO GENERAL, INC.
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COPYRIGHT OFFICE OF THE UNITED STATES OF AMERICA

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CERTIFICATE OF COPYRIGHT REGISTRATION

This is to certify, in conformity with section 55 of the Act to Amend and Consolidate the Acts respecting Copyright, approved March 4, 1909, as amended by the Act approved March 2, 1913, that TWO copies of the photoplay named herein have been deposited in this Office under the provisions of the Act of 1909, and that registration of a claim to copyright for the first term of twenty-eight years for said work has been duly made in the name of

RKO Radio Pictures, Inc.,
1270 Sixth Ave.,
New York, N.Y.

Title: King Kong. A Merian C. Cooper and Ernest B. Schoedsack production.
From an idea conceived by Edgar Wallace and Merian C. Cooper.
Screenplay by James Creelman and Ruth Rose. Author of photoplay,
RKO Radio Pictures, Inc., of U.S.

Date of publication in the United States Feb. 24 1933.

Copies received Apr. 11 1933

Barbara Ringer
REGISTERED OF COPYRIGHTS

(SEAL)

CCE 1
(Jan. 1913-1,000)

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EXHIBIT 1

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